

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

LINDA F. DAVISON

PLAINTIFF

VERSUS

CIVIL ACTION NO. 1:09cv253HSO-JMR

HARRISON COUNTY SCHOOL DISTRICT

DEFENDANT

**MEMORANDUM OPINION AND ORDER DISMISSING
PLAINTIFF'S COMPLAINT PURSUANT TO FED. R. CIV. P. 41(b)**

THIS MATTER COMES BEFORE THE COURT *sua sponte* for dismissal, Plaintiff having failed to comply with this Court's Order entered January 15, 2010. The Court, after review of the record and pleadings on file, finds that Plaintiff's Complaint should be dismissed for failure to prosecute pursuant to FED. R. CIV. P. 41(b).

On May 15, 2009, United States Magistrate Judge John M. Roper, entered a Report and Recommendation recommending denial of Plaintiff's application for *in forma pauperis* status. On January 15, 2010, this Court adopted said Report and Recommendation to deny Plaintiff's application to proceed *in forma pauperis*, and granted Plaintiff twenty (20) days from the date of the Order, or until February 4, 2010, to tender the requisite filing fee to the Clerk of Court.¹ The same Order

¹The signature date reflected on the Order [4] was January 15, 2009, however, as stated in Text Order dated February 18, 2010, the correct signature date on the Order [4] was January 15, 2010. Because the Order [4] correctly stated that Plaintiff had until on or before February 4, 2010, to file the requisite filing fee, this clerical error on the signature date has no bearing on Plaintiff's February 4, 2010, deadline to pay her filing fee.

warned Plaintiff that failure to abide by and comply with the Court's directives would result in the dismissal of her Complaint without further notice to Plaintiff. *See* Order [4]. To date, Plaintiff has failed to comply with the Court's Order and pay the filing fee.

FED. R. CIV. P. 41(b) provides that "[i]f the plaintiff fails to prosecute or to comply with these rules or a court order, a defendant may move to dismiss the action or any claim against it." The Court may also "dismiss an action *sua sponte* under FED. R. CIV. P. 41(b) for failure to comply with a court order." *Long v. Simmons*, 77 F.3d 878, 879 (5th Cir. 1996) (*citing McCullough v. Lynaugh*, 835 F.2d 1126 (5th Cir. 1988)). Because Plaintiff has failed to pay the requisite filing fee or otherwise prosecute this cause, the Court finds that Plaintiff's case should be dismissed without prejudice pursuant to Rule 41(b).

IT IS, THEREFORE, ORDERED AND ADJUDGED, that the above captioned cause should be and hereby is **DISMISSED WITHOUT PREJUDICE** pursuant to FED. R. CIV. P. 41(b).

SO ORDERED AND ADJUDGED, this the 19th day of February, 2010.

s/ Halil Suleyman Ozerden

HALIL SULEYMAN OZERDEN
UNITED STATES DISTRICT JUDGE